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8 UNITED STATES DISTRICT COURT
9 DISTRICT OF NEVADA
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11 UNITED STATES OF AMERICA,) 2:12-cr-00455-HDM-PAL
12 Plaintiff,) 2:15-cr-01661-HDM
13 vs.) ORDER
14 CHARLES BO MUMPHREY,)
15 Defendant.)
16 _____)

17 On August 27, 2015, defendant Charles Bo Mumphy
18 ("defendant") filed a motion to vacate, set aside, or correct
19 sentence under 28 U.S.C. § 2255 (ECF No. 138). The timely motion
20 asserted claims for relief under *Johnson v. United States*, - U.S.
21 -, 135 S. Ct. 2551 (2015) ("*Johnson* claims") as well as non-*Johnson*
22 claims. On February 26, 2016, defendant, represented by the
23 Federal Public Defender pursuant to General Order 2015-03, filed an
24 amended motion to vacate (ECF No. 146). The amended motion
25 asserted only *Johnson* claims. On September 22, 2016, defendant
26 moved to withdraw his *pro se* motion to vacate filed on August 27,
27 2015, and proceed only on the amended motion to vacate filed on
28 February 26, 2016. The basis for the withdrawal was that, due to a

1 conflict, the Federal Public Defender could not represent defendant
2 as to his non-*Johnson* claims. The court granted the motion to
3 withdraw on September 23, 2016 (ECF No. 155).

4 On March 6, 2017, following the Supreme Court's decision in
5 *Beckles v. United States*, 580 U.S. — , 137 S. Ct. 886 (Mar. 6,
6 2017), the court ordered the defendant to show cause why *Beckles*
7 did not require the court to deny his § 2255 motion. Defendant's
8 response to the order to show cause was due by April 20, 2017.

9 On April 6, 2017, defendant filed a *pro se* letter with the
10 court seeking appointment of CJA counsel to help him determine
11 whether he has any additional claims to assert in his pending
12 motion to vacate (ECF No. 162). On April 19, 2017, defendant's
13 counsel filed a motion to withdraw (ECF No. 163). Defendant did
14 not file any response to the court's order to show cause.

15 As apparently conceded by defendant, *Beckles* requires the
16 court to deny his claims arising under *Johnson*. However, in his
17 withdrawn § 2255 petition, defendant had asserted claims that did
18 not arise under *Johnson*. The court therefore feels it appropriate
19 to grant the defendant leave to file an amended motion asserting
20 all § 2255 claims he wishes to bring in these proceedings,
21 including those previously withdrawn.

22 Because the Federal Public Defender may not represent
23 defendant on his non-*Johnson* claims, counsel's motion to withdraw
24 (ECF No. 163) is hereby **GRANTED**.

25 As to defendant's motion for counsel, a "criminal defendant
26 has no right to counsel beyond his first appeal." *Coleman v.*
27 *Thompson*, 501 U.S. 722, 756 (1991). The decision to appoint
28 counsel is generally discretionary. *Chaney v. Lewis*, 801 F.2d

1 1191, 1196 (9th Cir. 1986), *cert. denied*, 481 U.S. 1023 (1987);
2 *Bashor v. Risley*, 730 F.2d 1228, 1234 (9th Cir.), *cert. denied*, 469
3 U.S. 838 (1984). However, the court must appoint counsel where the
4 complexities of the case are such that denial of counsel would
5 amount to a denial of due process, *Chaney*, 801 F.2d at 1196, and
6 where the petitioner is a person of such limited education as to be
7 incapable of fairly presenting his claims. See *Hawkins v. Bennett*,
8 423 F.2d 948 (8th Cir. 1970). The defendant's assertions in his
9 withdrawn petition were not complex and defendant was able to
10 fairly present his claims. Accordingly, the request for
11 appointment of counsel (ECF No. 162) is **DENIED**.

12 In accordance with the foregoing, counsel's motion to withdraw
13 (ECF No. 163) is **GRANTED**. Defendant's request for appointment of
14 counsel (ECF No. 162) is **DENIED**. Defendant is granted leave to
15 file a second amended motion to vacate asserting any and all claims
16 he may have under 28 U.S.C. § 2255. Defendant shall file any
17 second amended motion no later than August 15, 2017. Should
18 defendant fail to file a second amended motion, the court will
19 proceed to decide his pending amended motion (ECF No. 146) on the
20 merits.

21 IT IS SO ORDERED.

22 DATED: This 20th day of June, 2017.

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25 UNITED STATES DISTRICT JUDGE
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